IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 11TH DECEMBER 2006 / 20TH AGRAHAYANA 1928

OP.No. 23625 of 2001(K)

PETITIONER:

THE RECOGNISED SCHOOL TEACHER'S UNION REG.NO.91390/98, REP. BY ITS PRESIDENT A.M.JOY, S/O ANTONY, 41 YEARS, MANAPOIKELY HOUSE, MANNUTHY, THRISSUR DIST.

BY ADV. SRI.RENJITH THAMPAN
SRI.V.M.KRISHNAKUMAR

RESPONDENTS:
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1. THE STATE OF KERALA, REP. BY ITS SECRETARY DEPT. OF HIGHER EDUCATION, GOVT. OF KERALA, TRIVANDRUM.

2. THE SECRETARY, DEPT. OF HIGHER EDUCATION THIRUVANANTHAPURAM

3. THE RECOGNISED UNAIDED SCHOOL MANAGERS ASSOCIATION, REP. BY ITS PRESIDENT.

BY GOVERNMENT PLEADER SMT.M.R.SREELATHA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 11/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER IN C.M.P.NO. 38625/01 & IN I.A.NO.12787/06 IN O.P.NO.23625/01

DISMISSED.

11-12-2006 **SD/-, K.M.JOSEPH, JUDGE.**

PETITIONER'S EXHIBITS

EXT.P1	**TRUE COPY OF THE GOVT. ORDER DTD. 30-9-99**
EXT.P2	**TRUE COPY OF THE G.O.(MS)NO.244/99 DTD. 30-9-99**
EXT.P3	**TRUE COPY OF THE REPRESENTATION DTD. 9-3-00**
EXT.P4	**TRUE COPY OF THE REPRESENTATION DTD. 24-7-00**
EXT.P5	**TRUE COPY OF THE ORDER OF THE FIRST RESPONDENT DTD. 7-12-00**

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

O.P.No. 23625 OF 2001

Dated this the 11th day of December,2006.

JUDGMENT

Case of the petitioner in brief is as follows

Petitioner is a registered association of teachers in the recognised, un-aided schools in the state of Kerala. It is stated that salary is too low and if anybody dared to question them, he is threatened with expulsion. It stated that exorbitant amounts are collected by way of fees. Ext.P1 provides for collection of fees. Ext.P2 is the order dated 30-9-99. As per the same, Government have fixed the minimum amounts payable to the teachers. Minimum monthly rates of pay has been fixed in Ext.P2. In Ext.P2 no doubt the representatives of the management assured the Government that they are prepared to allow near parity in salary to the employees provided they are permitted to enhance the rate of fee of students.

2. Petitioner preferred Ext.P3. In Ext.P3 they sought to implement Ext.P2. They wanted action to be taken if the salary and other privileges has not been given. They also seek other reliefs including:

> " Unaided school teachers should also enjoy the rights of a Government/aided teachers like leave

privileges, S.S.L.Supervision, Invigilation, Appointment Order, Service Book, P.F.privileges etc."

3. Ext.P5 is the order which is challenged in this writ petition. Ext.P5 is dated 07-12-2000. Therein general direction has been issued to ensure implementation of Ext.P2 and to take action against those recognised unaided schools who are not implementing the same and the provisions under Chapter XIV AA of K.E.R. As far as demand No.4 and security for job is concerned, they were rejected.

4. In the counter affidavit, it is inter-alia stated as follows:

" Meanwhile a representation from the Recognised School Teachers Union was received in Government on 2-6-2005 with the demands such as :

(i) implement a pay scale instead of a minimum salary.
(ii) allow maternity leave with pay.
(iii) to grant the benefits enjoyed by Government/ Aided School teachers attending the training session conducted by Education Department to such teachers from the unaided sector either from Government or by collecting from the respective managements.
(iv)make applicable the service conditions of Government/Aided School Teachers to Unaided School Teachers also.
(v) Counting of 50% of the unaided service along with Government/Aided School service in the case of teachers getting job in Government/ Aided Sector, etc.

The demands of the teachers of Unaided Schools are being examined by Government and an appropriate decision will be taken after having a discussion with the representatives of Recognised Unions of Teachers and Managers of Unaided schools."

4. Learned counsel for the petitioner places reliance on the

decision of the Apex court in **K.Krishnamacharyulu and others v. Sri.Venkateswara Hindu College of Enginerring and another** (AIR 1998 Supreme Court 295). Therein, the court held as follows:

> " It is not in dispute that executive instructions issued by the Government have given them the right to claim the pay scales so as to be on par with the Government employees. The question is : when there is no statutory rules issued in that behalf, and the Institution, at the relevant time, being not in receipt of any grant-in-aid; whether the writ petition under Article 225 of the Constitution is not maintainable? In view of the long line of decisions of this Court holding that when there is an interest created by the Government in an Institution to impact education, which is a fundamental right of the citizens, the teachers who teach the education gets an element of public interest in the performance of their duties. As a consequence, the element of public interest requires to regulate the conditions of service of those employees on par with Government employees. In consequence, are they also not entitled to the parity of the pay scales as per the executive instructions of the Government? It is not also in dispute that all the persons who filed the writ petition along with the appellant had later withdrawn from the writ petition and thereafter the respondent-Management paid the salaries on par with the Government employees. Since the appellants are insisting upon enforcement of their right through the judicial pressure, they need and seek the protection of law. We are of the view that the State has obligation to provide facilities and opportunities to the people to avail of the right to eduction. The private institutions cater to the needs of the educational opportunities. The teacher duly appointed to a post in the private institution also is entitled to seek enforcement of the orders issued by the Government. The question is as to which forum one should approach. The High Court has held that the remedy is available under the Industrial Dispute Act. When an element of public interest is created and the institution is catering to that element, the teacher, the arms of the institution is also entitled to avail of the remedy provided under Article 226; the jurisdiction part is very wide. It would be different position, if the remedy is a private law remedy. So, they cannot be denied

> the same benefit which is available to others. Accordingly, we hold that the writ petition is maintainable. They are entitled to equal pay so as to be on par with Government employees under Article 39(d) of the Constitution."

5. He would submit that therefore, there should not be any difference between the amounts paid to the teachers in recognised schools and the Government schools. He would submit that they are doing the same kind of work . He also invited my attention of Rule 17 (6) of Chapter V to contend that it is open to the Government to issue directions to recongised schools. Whatever that be, I feel that in view of the statement contained in the counter affidavit which is extracted above, a decision should be taken by the Government in the matter within the time stipulated by this court.

6. Therefore, the writ petition is disposed of directing the first respondent to take a decision as referred in the counter affidavit after hearing the petitioner and the representatives of the managers of he un-aided recognised schools within a period of four months from the date of receipt of a copy of this judgment.

Original petition is disposed of in the above terms.

K.M.JOSEPH.
JUDGE.

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